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U.S. Citizenship
and Immigration
Services

FILE: LIN 03 038 50117 Office: NEBRASKA SERVICE CENTER Date: JUN 15 2004

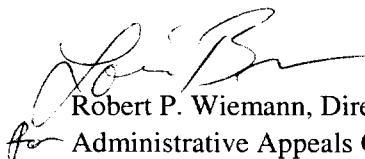
IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for a Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
for Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is commercial printing and direct mail services company. It seeks to employ the beneficiary a computer support specialist. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary's foreign academic education is not the equivalent to a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel asserts that the beneficiary has the necessary credentials to meet the qualifications set forth in the approved labor certification and that CIS should exercise discretion to approve the petition.

In pertinent part, Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(g)(2). In this case, that date is March 18, 2002.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, the CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of a computer support specialist. In the instant case, only item 14 contains any information. It shows the following requirements:

- | | |
|-------------------------|---------------------------------|
| 14. Education | |
| Grade /High School | Complete |
| College | 4 yr |
| College Degree Required | Bachelor of Science |
| Major Field of Study | Computer Science or Engineering |

As proof of the beneficiary's bachelor's degree required by the labor certification, the petitioner submitted a copy of the beneficiary's resume, a copy of an associate diploma from Lotus College in Vietnam indicating that the beneficiary completed a two year program in multimedia technology in 1993, and a copy of the beneficiary's diploma from the Foreign Languages University of Ha Noi, Vietnam, reflecting that he received a Bachelor of Foreign Languages in English in 1995. The beneficiary's resume mentions a 1997 associate diploma in law and an intermediate degree in German in addition to other schooling. The record does not contain copies of these diplomas.

The petitioner also submitted a copy of an evaluation report from the Foundation for International Services, Inc.,

dated July 17, 2000. This evaluation concludes that the beneficiary has the equivalent of a U. S. bachelor's degree in a foreign language (English), "and has, as a result of his educational background and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in computer science from an accredited college or university in the United States." The evaluation appears to base its opinion of the beneficiary's work/academic equivalency on the information supplied in his resume relating to his past work experience, which was supported by two letters verifying past employment,¹ as well as immigration regulations describing the acceptable work/academic formula relevant to non-immigrant visas. Comparable provisions do not appear in the regulations related to employment based immigrant petitions.

The director denied the petition, concluding that the beneficiary's associate degree in multimedia technology and his bachelor's degree in a foreign language (English) is not acceptable evidence that the beneficiary met the terms of the approved labor certification. The director noted that there is no provision in this section of law that permits the substitution of work experience for formal education. The AAO concurs.

On appeal, counsel contends that the credentials evaluation report and the approval of the labor certification by the Department of Labor (DOL) should prevail in the determination of whether the beneficiary's qualifications meet the requirements of the labor certification and establish the beneficiary's eligibility for the visa classification sought. Counsel asserts that the beneficiary has the foreign degree equivalency necessary to qualify for a third preference classification in accordance with the terms of the approved labor certification.

At the outset, it is noted that CIS, not DOL, has the final authority with regard to determining an alien's qualifications for preference status and the authority to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by DOL. *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989).

It is also noted that the regulation at 8 C.F.R. § 204.5(l)(2) specifically defines a professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent *degree* and is a member of the professions." (Emphasis added). The regulations also require evidence that the "alien meets the educational, training or experience, and any other requirements of the individual labor certification" where the visa classification of a skilled worker is sought. 8 C.F.R. § 204.5(l)(3)(ii)(B). In this case, the labor certification plainly and expressly requires that the job candidate have four years of college and a bachelor's degree with a major in computer science or engineering.

In evaluating a beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS will recognize a foreign equivalent degree but will not accept a functional equivalency based on a series of degrees and work experience when a labor certification plainly and expressly requires a candidate with a specific college degree. CIS uses an evaluation by a credentials evaluation organization as an advisory opinion only. If it is in any way questionable, it may be discounted or given less weight. *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988). In the present matter, the evaluation report erroneously combined the beneficiary's bachelor's degree in a foreign language, his associate degree in

¹ These letters are not contained in the record.

multimedia technology and his work experience in evaluating the beneficiary's foreign education. It is further noted that while the regulations permit a certain combination of work experience and a bachelor's degree to be considered the equivalent of an advanced degree,² there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree.

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses a United States bachelor's degree in computer science or engineering or a foreign equivalent degree as required by the terms of the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

² See 8 C.F.R. § 204.5(k)(2) which permits a U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience to be considered as an advanced degree.